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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

B.R.,

Petitioner,

v.

THE SUPERIOR COURT OF  
MONTEREY COUNTY,

Respondent;

MONTEREY COUNTY DEPARTMENT  
OF SOCIAL SERVICES,

Real Party in Interest.

H046720

(Monterey County  
Super. Ct. No. 18JD000061)

B.R. (mother) has filed a petition for extraordinary writ (petition) seeking relief from a juvenile court order terminating reunification services with mother's young son and setting the matter for a permanency planning hearing under Welfare and Institutions Code section 366.26.<sup>1</sup> Mother contends there is insufficient evidence supporting the juvenile court's decision to terminate services. We conclude ample evidence supports the

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<sup>1</sup> Unspecified statutory references are to the Welfare and Institutions Code.

juvenile court's findings, and the juvenile court did not abuse its discretion in setting a section 366.26 hearing. We therefore deny mother's petition.

## **I. FACTS AND PROCEDURAL BACKGROUND**

In April 2018, mother's son, (child), who was then seven months old, entered into protective custody after the Monterey County Department of Social Services (the Department) filed a section 300 petition. The petition noted that mother was incarcerated in the county jail, and that due to her mental health issues and ongoing domestic violence between mother and child's father, there was substantial risk to child's safety. In addition to committing child to the care of the Department, the juvenile court ordered drug testing of both parents. The juvenile court sustained the Department's petition pursuant to section 300, subdivisions (b) and (g).<sup>2</sup>

Mother remained incarcerated until May 2018. During her incarceration, mother met several times with a department social worker to discuss a case plan. In a case plan update provided to the juvenile court in May 2018, the Department indicated concerns about mother's possible use of methamphetamines and her unaddressed mental health needs. Nevertheless, the Department's case plan continued to reflect a goal of family reunification, and the Department recommended that both father and mother be offered family reunification services.

On May 8, 2018, the juvenile court made an initial jurisdiction and disposition order. Thereafter, on May 29, 2018, the juvenile court conducted a jurisdictional hearing and found child to be a dependent of the court. The juvenile court allowed mother visitation according to the case plan, but it deferred disposition because mother's counsel

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<sup>2</sup> Section 300, subdivision (b)(1) authorizes dependency jurisdiction if a child "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child." (§ 300, subd. (b)(1).) Section 300, subdivision (g) authorizes dependency jurisdiction if a "child's parent has been incarcerated . . . and cannot arrange for the care of the child." (§ 300, subd. (g).)

requested a contested hearing. In an addendum report filed in the middle of June, the Department noted that mother had been released from jail, had had a first visit with child, and she had been “very loving and affectionate towards the child.” The Department also noted in its report that mother had refused to submit to a drug test. Ultimately, the Department recommended providing family reunification services to both mother and father.

After a hearing held on June 19, 2018, the juvenile court issued a dispositional order removing child from mother’s physical custody. The court ordered family reunification services for both mother and father and set a six-month status review for December 4, 2018. At the June 2018 hearing, the Department noted that mother had not agreed to a prior drug test, and the juvenile court told mother that it was important to comply with drug testing in a timely fashion as “it’s really critical that every single day you’re working your plan and that you can demonstrate that to the social worker.” The case plan for mother included the requirements that she demonstrate her ability to stay drug free by complying with random drug testing; complete recommended behavioral health assessments and individual therapy; and meet at least once per month with the social worker. A three-month oral review occurred in September 2018, at which time the juvenile court ordered mother and father to continue to comply with their case plans.

On November 21, 2018, the Department filed a six-month status report recommending that the court terminate family reunification services for both parents.<sup>3</sup> The Department’s report noted that mother’s contact with the Department had been inconsistent throughout the review period, and that the Department had attempted unsuccessfully to have monthly meetings with her. The report also indicated that mother had missed several appointments with her therapist, which caused the therapist to

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<sup>3</sup> Father is not a party to mother’s petition and has not made any appearance as to her petition.

discontinue services. However, the Department noted that mother had recently re-engaged with therapy and had attended two therapy sessions in November. The Department stated mother had not appeared for a parenting education group and had only attended three out of the eight parenting classes during the review period. Mother also missed appointments related to substance abuse treatment, admitted using marijuana, tested positive for amphetamines, and at other times failed to show up for drug screening tests. The Department asserted that mother “has not addressed her substance use issues nor has she demonstrated insight into the reasons that led to the dependency” and has “not fully addressed her mental health and only recently re-engaged in individual therapy.”

At the review hearing in early December 2018, both mother and father objected to the Department’s recommendation to terminate reunification services, and they requested a contested hearing. In February 2019, the Department filed documents provided by mother, including a letter from the clinical supervisor for an organization called “Door To Hope” stating that mother had “inconsistent attendance and participation” in its outpatient services. Other documents filed at this time indicate mother attended meetings of Alcoholics Anonymous or Narcotics Anonymous (AA/NA).

Due to continuances and a change in mother’s counsel, the contested six-month review hearing did not occur until March 4, 2019. Both father and mother testified. Mother acknowledged her substance abuse issues but testified she was currently sober and had recently started attending AA or NA meetings. She admitted that she had not attended many meetings, either because of transportation issues or because of conflicting appointments, and it was not a priority for her to attend these meetings. She acknowledged that her participation in drug counseling outpatient services from Door To Hope had been “inconsistent.” In terms of drug testing, she stated that her last positive test had been in approximately September or “possibly” December.

With respect to psychological therapy, mother testified that she had found it beneficial and planned on continuing it, although she had been “on the fence about it” and had disagreed with the “viewpoint” of her therapist. At the time of the hearing in March 2019, mother had not yet engaged a new therapist, although she had tried to reach out to at least one psychologist.

Mother also testified that “[a]s of tomorrow I should be signing an intake contract” with a “safe home for mothers with children,” and that her plan was to go there the following day. She also testified that she participated in a court-ordered domestic violence program but had not attended all of the sessions. She had attended all but one of her weekly visits with child, which were always supervised and were two hours long.

After taking evidence and hearing argument, the juvenile court issued an oral ruling. The court found that the parents had “recently” been “attempting to comply with the case plan” and emphasized that they had faced challenges such as having to choose between various programs due to work conflicts. The juvenile court also noted that mother “may be just on [the] verge right now of being able to make some real changes.” However, the juvenile court further found that it was still not clear whether there would be a therapist that shared the same “treatment goals as the mother.” The court noted that the circumstances showed “the mother may just be shifting housing and therapy and services and possibly AA-NA meetings, and we don’t know exactly what that’s going to look like.” The court further considered that “there does need to be a period of time to demonstrate sobriety and a period of time for the social worker to be able to assess the appropriateness of unsupervised visits.”

Ultimately, the juvenile court concluded that there was not a substantial probability of returning child to the care of the parents within six months if reunification services were extended. It therefore terminated services for both parents and set a section 366.26 hearing for July 2, 2019.

Mother timely petitioned for review of the juvenile court's order under California Rules of Court, rule 8.452.

## II. DISCUSSION

Mother argues that an extension of reunification services for her was warranted here because there was “credible evidence of significant progress by mother in her case plan,” and the juvenile court failed to properly weigh such evidence in its decision. The Department has not filed a response to mother's petition. After a careful review of the record, we conclude that substantial evidence supports the juvenile court's decision to terminate reunification services for mother, and the court did not abuse its discretion in setting the matter for a permanency planning hearing under section 366.26. We therefore deny mother's petition.

“When a child is removed from a parent's custody, the juvenile court ordinarily must order child welfare services for the minor and the parent for the purpose of facilitating reunification of the family.” (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 843 (*Tonya M.*); see § 361.5, subd. (a).) Where the child is less than three years old at the time of removal, as child was here, “reunification services are presumptively limited to six months. (§ 361.5, subd. (a)(2)).” (*Tonya M., supra*, at p. 843.) “We have long recognized that providing children expeditious resolutions is a core concern of the entire dependency scheme. [Citations.] If this is true of dependency cases in general, it is doubly true for the very young.” (*Id.* at p. 847, fn. 4.)

At the six-month review (the hearing for the order at issue here), the juvenile court had to “decide whether to continue or terminate” reunification services. (*Tonya M., supra*, 42 Cal.4th at p. 840.) Section 366.21, subdivision (e)(3) (hereafter section 366.21(e)(3)), discusses the parameters of this decision and states, “If the child was under three years of age on the date of the initial removal . . . , and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to

Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under three years of age on the date of initial removal . . . , may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.” (§ 366.21(e)(3).) Thus, “[s]o long as reasonable services have in fact been provided, the juvenile court must find ‘a substantial probability’ that the child may be safely returned to the parent within six months in order to continue services. (§ 366.21, subd. (e).)” (*Tonya M.*, *supra*, at p. 845.)

A juvenile court thus must make “two distinct determinations” in applying section 366.21(e)(3). (*M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 175 (*M.V.*).) “First, the statute identifies specific factual findings—failure to participate regularly and make substantive progress in the court-ordered treatment plan—that, if found by clear and convincing evidence, would *justify* the court in scheduling a [section 366.26] hearing to terminate parental rights.” (*Id.* at pp. 175–176.) Second, “[n]otwithstanding any findings made pursuant to the first determination, the court shall not set a [section 366.26] hearing if it finds either: (1) ‘there is a substantial probability that the child . . . may be returned to his or her parent . . . within six months’; or (2) ‘reasonable services have not been provided’ to the parent.” (*Id.* at p. 176.)

Here, there is no dispute that the Department provided reasonable services to mother. Rather, mother contends there was insufficient evidence to support some of the juvenile court’s factual findings, namely that mother failed to make substantive progress in the court-ordered treatment plan, and that there was not a substantial probability that child may be returned to mother’s care within six months.

We review the juvenile court’s order terminating reunification services to determine if it is supported by substantial evidence. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688.) “In making this determination, we review the record in the light most favorable to the court’s determinations and draw all reasonable inferences

from the evidence to support the findings and orders. [Citation.] ‘We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.’ ” (*Id.* at pp. 688–689.) If the juvenile court’s two determinations are supported by substantial evidence, then the juvenile court may set a section 366.26 hearing. (*M.V., supra*, 167 Cal.App.4th at p. 179.) We review that discretionary decision for abuse of discretion and will not disturb it unless “the court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination.” (*In re Katelynn Y.* (2012) 209 Cal.App.4th 871, 881.) “When two or more inferences reasonably can be deduced from the facts, we have no authority to reweigh the evidence or substitute our judgment for that of the juvenile court.” (*Ibid.*)

As noted above, the juvenile court was first required to find “by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan.” (§ 366.21(e)(3).) Here, there is substantial evidence to support the juvenile court’s finding under that standard that mother had failed to make substantive progress in the case plan. Mother’s contact with the Department was inconsistent, and the Department was unable to meet monthly with her. In addition, mother did not regularly visit a therapist to address her mental health needs. At the March 2019 hearing, mother appeared to be on the cusp of leaving her current therapist for an as-yet unknown provider. In terms of her substance abuse issues, mother testified that she had not consistently attended or prioritized AA/NA meetings, and she had a positive drug test as recently as either September or “possibly” December. This positive drug test occurred either in the middle of or near the end of her six-month review period, given the June 2018 disposition hearing and order. The period for reunification services is to be “determined relative to the child’s initial removal into custody or the jurisdictional or dispositional hearing, not the length of previous services or the dates of previous review hearings.” (See *Tonya M., supra*, 42 Cal.4th at p. 846.)

Secondly, the juvenile court was required to determine whether there was a “substantial probability” that child may be returned to mother within six months. (§ 366.21(e)(3).) In making this finding, a juvenile court may take “all of the evidence into consideration” including, but “not limited to, . . . the three factors set forth in section 366.21, subdivision (g)(1), and California Rules of Court, rule 5.710(f)(1)(E).”<sup>4</sup> (*M.V.*, *supra*, 167 Cal.App.4th at p. 181.) Section 366.21, subdivision (g)(1), states, a substantial probability of return exists if the court finds: “(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child. [¶] (B) That the parent or legal guardian has made significant progress in resolving problems that led to the child’s removal from the home. [¶] (C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child’s safety, protection, physical and emotional well-being, and special needs.” (§ 366.21, subd. (g)(1)(A)–(C).)

We have carefully reviewed the record and conclude there is ample evidence to support the juvenile court’s conclusion that an additional six months of reunification services was not warranted under the circumstances. As late as March 2019, nearly a year after child was taken into custody, mother was still in the early stages of tackling a myriad of significant issues, including housing, maintaining her sobriety, and addressing her mental health needs. As noted above, the record does not reflect mother had made substantial progress in addressing the underlying issues that led to child’s removal. Rather, as the juvenile court aptly stated, mother was just on the “verge” of making substantive changes. Mother had not attained unsupervised visitation rights, and her visits with child had been limited to two hours of supervised visitation each week.

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<sup>4</sup> California Rule of Court rule 5.710 has since been modified and states that the trial court may set a hearing “under section 366.26 within 120 days if any of the conditions in section 366.21(e) are met; or the parent is deceased.” (Cal. Rules of Court, rule 5.710(b)(1).)

We recognize that mother was trying to follow the case plan, and her progress was impeded by psychological, financial, and logistical challenges. However, the difficulties mother faced highlight the sufficiency of the evidence in support of the juvenile court's findings that there was not a substantial probability that child may be returned to mother's custody by the 12-month review date. The juvenile court was therefore justified in terminating reunification services. Furthermore, the juvenile court did not abuse its discretion in setting the matter for a permanency planning hearing to effectuate the goal of providing children, especially very young children like child, with "expeditious resolutions." (*Tonya M.*, *supra*, 42 Cal.4th at p. 847, fn. 4.)

### **III. DISPOSITION**

The petition for extraordinary writ is denied.

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DANNER, J.

WE CONCUR:

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MIHARA, ACTING, P.J.

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GROVER, J.

***B.R. v. Superior Court***  
**H046720**